



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/689,721 08/12/96 PERRY

A

ANDREW M PERRY  
2041 STATE STREET  
SALEM OR 97301

F1M1/0918

EXAMINER

LUEBKE, R

ART UNIT

PAPER NUMBER

3105

DATE MAILED:

09/18/97

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/689,721

Applicant(s)

Perry

Examiner

Renee S. Luebke

Group Art Unit

3105



☒ Responsive to communication(s) filed on the amendments filed on June 2 and July 24, 1997.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 2 and 3 is/are pending in the application.

Of the above, claim(s) none is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 2 and 3 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. The proposed substitute sheets of drawings, filed on June 2, 1997 have been accepted by the examiner. In addition, the substitute specification is appreciated and has been entered.

2. The amendment filed June 2, 1997 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

- a. the requirement that the ring be "a few thousandths of an inch larger" than the recorder,
- b. the use of a "thin cloth material" for the strap,
- c. the use of a "simple over-hand" knot, and
- d. that the principle may be "extended to applications involving other musical instruments or objects."

Applicant is required to cancel the new matter in the response to this Office action.

3. Applicant has submitted two new claims. This submission has been interpreted as a request to cancel the original claim and enter the two new ones. It is noted that, when new claims are added, they must be numbered consecutively, beginning with the number next following the highest numbered claim previously presented. Therefore, the new claims have been renumbered 2 and 3. Accordingly claims 2 and 3 are presently pending in this application. Any claims added to this application must begin with number 4. It is further noted that the dependency of claim 3 must be corrected.

4. For future reference, it is noted that new claims and applicant's remarks should not be underlined. Underlining (and bracketing [ ]) is only necessary when amending existing claims.

5. Claims 2 and 3 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

Claim 2 is unclear. If the claimed invention is "for holding a recorder," it cannot also comprise the recorder.

The beginning of claim 2 is narrative in form. The statement requiring the device to be "simple and inexpensive" is judgmental and relative, and should be deleted.

Claim 2 lacks antecedent basis for "the point" on line 5 and "the two pieces" on line 6.

The claims must be in single sentence form; the period at the end of line 6 in claim 2 must be deleted.

Claim 3 is unclear. A recorder cannot be "any other similar musical instrument or object." A recorder is a recorder; it cannot be something else.

Claim 3 includes new matter since the use of "any other similar musical instrument or object" is not supported by the specification as originally filed.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wimmershoff-Caplan in view of applicant's stated prior art (a knotted string around the recorder). The device of Wimmershoff-Caplan comprises a circular ring 20 and a strap 30 that is attached to the ring "for securing the device for convenient access" as claimed. As it is known to support a recorder from a strap, it would have been obvious to use this strap arrangement to support a recorder in a similar manner.

Applicant argues that the present invention is different from that of Wimmershoff-Caplan which "is designed for a straight-shaft object possessing a clip." However, it is noted that such a ring is also usable on other shaped shafts.

Applicant further argues that the decorative design of Wimmershoff-Caplan is inappropriate for small children. However, it is noted that the limitations of the present claim do not prohibit such decoration. Further, it is unclear why applicant finds such decoration inappropriate since school children frequently wear jewelry.

8. It is noted that in the remarks applicant refers to "our device." Is there another individual involved in the invention of this device, besides Andrew M. Perry?

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire **THREE MONTHS** from the date of this action. In the event a first response is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than **SIX MONTHS** from the date of this final action.

10. **Any response to this final action should be mailed to:**  
Box AF  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Serial Number: 08/689721  
Art Unit: 3105

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**or faxed to:**


(703) 305-7687, (for formal communications; please mark  
"EXPEDITED PROCEDURE")

**Or:**

(703) 308-0552 (for informal or draft communications, please clearly  
label "PROPOSED" or "DRAFT")

**Hand-delivered responses** should be brought to Crystal Plaza 4, 2201 South  
Clark Place, Arlington, Virginia, Eighth Floor (Receptionist).

11. Any inquiry concerning this communication or earlier communications from the  
examiner should be directed to Mrs. Renee Luebke at (703) 308-1511.

  
Renee S. Luebke  
Primary Patent Examiner  
September 17, 1997